

# SENATE BILL 387

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By: **Senator Kelley**

Introduced and read first time: February 1, 2012

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Identity Fraud Crimes – Restitution**

3 FOR the purpose of expanding the circumstances under which a court is authorized to  
4 enter a judgment of restitution that orders a defendant or child respondent to  
5 make restitution in situations in which the victim suffered certain losses or  
6 incurred certain expenses as a direct result of identity fraud; establishing that  
7 circumstances eligible for restitution include alteration of a victim's consumer  
8 report or the imposition of financial damage or loss on an identity fraud victim;  
9 authorizing a court to accept a certain affidavit as evidence of financial damage  
10 or loss that is eligible for restitution; expanding the circumstances under which  
11 certain State's Attorneys are required to help certain victims prepare a certain  
12 request for restitution and to advise certain victims regarding collection of  
13 restitution; establishing that if certain victims suffer identity fraud, certain  
14 State's Attorneys are required to consult with the Office of the Attorney General  
15 under certain circumstances for certain advice and assistance; authorizing the  
16 Office of the Attorney General to provide to identity fraud victims certain  
17 information and assistance on recovery from financial damage or loss and how  
18 to make a restitution claim; requiring that certain assistance to identity fraud  
19 victims include establishing a certain monetary value for financial damage or  
20 loss; requiring the Office of the Attorney General to develop a certain affidavit  
21 form for victims of identity fraud; authorizing the Office of the Attorney General  
22 to adopt regulations; making conforming changes; defining certain terms; and  
23 generally relating to restitution.

24 BY repealing and reenacting, without amendments,  
25 Article – Commercial Law  
26 Section 14–1201(d)  
27 Annotated Code of Maryland  
28 (2005 Replacement Volume and 2011 Supplement)

29 BY repealing and reenacting, with amendments,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Criminal Law  
2 Section 8–301(i)  
3 Annotated Code of Maryland  
4 (2002 Volume and 2011 Supplement)

5 BY repealing and reenacting, with amendments,  
6 Article – Criminal Procedure  
7 Section 11–601, 11–603, 11–614, and 11–615  
8 Annotated Code of Maryland  
9 (2008 Replacement Volume and 2011 Supplement)

10 BY adding to  
11 Article – Criminal Procedure  
12 Section 11–614.1  
13 Annotated Code of Maryland  
14 (2008 Replacement Volume and 2011 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article – Commercial Law**

18 14–1201.

19 (d) (1) “Consumer report” means any written, oral, or other  
20 communication of any information by a consumer reporting agency bearing on a  
21 consumer’s credit worthiness, credit standing, credit capacity, character, general  
22 reputation, personal characteristics, or mode of living which is used or expected to be  
23 used or collected in whole or in part for the purpose of serving as a factor in  
24 establishing the consumer’s eligibility for:

25 (i) Credit or insurance to be used primarily for personal, family,  
26 or household purposes;

27 (ii) Employment purposes; or

28 (iii) Other purposes authorized under § 14–1202 of this subtitle.

29 (2) The term does not include:

30 (i) Any report containing information solely as to transactions  
31 or experiences between the consumer and the person making the report;

32 (ii) Any authorization or approval of a specific extension of  
33 credit directly or indirectly by the issuer of a credit card or similar device; or

1 (iii) Any report in which a person who has been requested by a  
2 third party to make a specific extension of credit directly or indirectly to a consumer  
3 conveys his decision with respect to the request, if the third party advises the  
4 consumer of the name and address of the person to whom the request was made and  
5 the person makes the disclosures to the consumer required under § 14–1212 of this  
6 subtitle.

#### 7 Article – Criminal Law

8 8–301.

9 (i) [In addition to restitution under Title 11, Subtitle 6 of the Criminal  
10 Procedure Article, a] A court may order a person who pleads guilty or nolo contendere  
11 or who is found guilty under this section to make restitution to the victim for  
12 reasonable costs[, including reasonable attorney’s fees, incurred:

13 (1) for clearing the victim’s credit history or credit rating; and

14 (2) in connection with a civil or administrative proceeding to satisfy a  
15 debt, lien, judgment, or other obligation of the victim that arose because of the  
16 violation] **IN ACCORDANCE WITH TITLE 11, SUBTITLE 6 OF THE CRIMINAL  
17 PROCEDURE ARTICLE.**

#### 18 Article – Criminal Procedure

19 11–601.

20 (a) In Part I of this subtitle the following words have the meanings indicated.

21 (b) “Central Collection Unit” means the Central Collection Unit in the  
22 Department of Budget and Management.

23 (c) “Child” means a person under the age of 18 years.

24 **(D) “CONSUMER REPORT” HAS THE MEANING STATED IN § 14–1201(D)  
25 OF THE COMMERCIAL LAW ARTICLE.**

26 **[(d)] (E)** (1) “Crime” means an act committed by a person in the State  
27 that is a crime under:

28 (i) common law;

29 (ii) § 109 of the Code of Public Local Laws of Caroline County;

30 (iii) § 4–103 of the Code of Public Local Laws of Carroll County;

1 (iv) § 8A-1 of the Code of Public Local Laws of Talbot County; or

2 (v) except as provided in paragraph (2) of this subsection, the  
3 Annotated Code.

4 (2) “Crime” does not include a violation of the Transportation Article  
5 that is not punishable by a term of confinement.

6 [(e)] (F) “Defendant” means a person:

7 (1) who has received probation before judgment;

8 (2) who has been found guilty of a crime, even if the defendant has  
9 been found not criminally responsible; or

10 (3) whose plea of nolo contendere to a crime has been accepted by the  
11 court.

12 [(f)] (G) “Division” means the Division of Parole and Probation.

13 (H) “FINANCIAL DAMAGE OR LOSS” MEANS:

14 (1) COSTS INCURRED BY A VICTIM OF IDENTITY FRAUD TO  
15 REMEDIATE THE VICTIM’S CONSUMER REPORT, INCLUDING THE VICTIM’S  
16 CONSUMER CREDIT HISTORY OR RATING;

17 (2) COSTS INCURRED BY A VICTIM OF IDENTITY FRAUD DUE TO  
18 ANY CIVIL OR ADMINISTRATIVE PROCEEDING TO SATISFY ANY DEBT, LIEN, OR  
19 OTHER OBLIGATION;

20 (3) LOST WAGES DUE TO EFFORTS BY THE VICTIM OF IDENTITY  
21 FRAUD TO RESTORE FINANCIAL ACCOUNTS AND TO REMEDIATE THE VICTIM’S  
22 CONSUMER REPORT;

23 (4) THE MONETARY VALUE OF TIME REASONABLY SPENT BY THE  
24 VICTIM OF IDENTITY FRAUD TO REMEDIATE THE VICTIM’S CONSUMER REPORT,  
25 TO RESTORE FINANCIAL ACCOUNTS, OR TO SATISFY ANY OTHER FINANCIAL  
26 OBLIGATION RESULTING FROM AN IDENTITY FRAUD OFFENSE; OR

27 (5) ANY OTHER EXPENSES, INCLUDING REASONABLE ATTORNEY’S  
28 FEES, THAT REASONABLY MAY BE SHOWN TO HAVE BEEN INCURRED BY THE  
29 VICTIM DUE TO THE COMMISSION OF IDENTITY FRAUD AGAINST THE VICTIM.

30 (I) “IDENTITY FRAUD” MEANS A VIOLATION OF § 8-301 OF THE  
31 CRIMINAL LAW ARTICLE.

1           **(J) “IDENTITY FRAUD RESTITUTION AFFIDAVIT” MEANS A FORM**  
2 **DEVELOPED BY THE OFFICE OF THE ATTORNEY GENERAL THAT DOCUMENTS**  
3 **THE FINANCIAL DAMAGE OR LOSS INCURRED BY A VICTIM OF IDENTITY FRAUD.**

4           **[(g)] (K)** “Judgment of restitution” means a direct order for payment of  
5 restitution or an order for payment of restitution that is a condition of probation in an  
6 order of probation.

7           **[(h)] (L)** “Liable parent” means a parent:

8                   (1) whose child has committed a crime or delinquent act; and

9                   (2) who has been ordered to pay restitution under § 11–604 of this  
10 subtitle.

11           **[(i)] (M)** “Restitution obligor” means a defendant, child respondent, or liable  
12 parent against whom a judgment of restitution has been entered.

13           **[(j)] (N)** “Victim” means:

14                   (1) a person who suffers death, personal injury, **[or]** property damage,  
15 or loss as a direct result of a crime or delinquent act; **[or]**

16                   **(2) A PERSON WHO SUFFERS FINANCIAL DAMAGE OR LOSS AS A**  
17 **DIRECT RESULT OF IDENTITY FRAUD; OR**

18                   **[(2)] (3)** if the person is deceased, the personal representative of the  
19 estate of the person.

20 11–603.

21           (a) A court may enter a judgment of restitution that orders a defendant or  
22 child respondent to make restitution in addition to any other penalty for the  
23 commission of a crime or delinquent act, if:

24                   (1) as a direct result of the crime or delinquent act, property of the  
25 victim was stolen, damaged, destroyed, converted, or unlawfully obtained, or its value  
26 substantially decreased;

27                   **(2) AS A DIRECT RESULT OF IDENTITY FRAUD, THE VICTIM’S**  
28 **CONSUMER REPORT IS ALTERED TO THE DETRIMENT OF THE VICTIM;**

29                   **(3) AS A DIRECT RESULT OF IDENTITY FRAUD, THE VICTIM**  
30 **INCURS FINANCIAL DAMAGE OR LOSS;**

1                    ~~[(2)]~~ **(4)**        as a direct result of the crime or delinquent act, the victim  
2 suffered:

3                    (i)        actual medical, dental, hospital, counseling, funeral, or  
4 burial expenses or losses;

5                    (ii)       direct out-of-pocket loss;

6                    (iii)      loss of earnings; or

7                    (iv)      expenses incurred with rehabilitation;

8                    ~~[(3)]~~ **(5)**        the victim incurred medical expenses that were paid by the  
9 Department of Health and Mental Hygiene or any other governmental unit;

10                   ~~[(4)]~~ **(6)**        a governmental unit incurred expenses in removing, towing,  
11 transporting, preserving, storing, selling, or destroying an abandoned vehicle as  
12 defined in § 25–201 of the Transportation Article;

13                   ~~[(5)]~~ **(7)**        the Criminal Injuries Compensation Board paid benefits to a  
14 victim; or

15                   ~~[(6)]~~ **(8)**        the Department of Health and Mental Hygiene or other  
16 governmental unit paid expenses incurred under Subtitle 1, Part II of this title.

17                   (b)        A victim is presumed to have a right to restitution under subsection (a) of  
18 this section if:

19                   (1)        the victim or the State requests restitution; and

20                   (2)        the court is presented with competent evidence of any item listed  
21 in subsection (a) of this section.

22                   **(C)    A COURT MAY ACCEPT AN IDENTITY FRAUD RESTITUTION**  
23 **AFFIDAVIT AS COMPETENT EVIDENCE OF FINANCIAL DAMAGE OR LOSS THAT IS**  
24 **ELIGIBLE FOR RESTITUTION.**

25                   ~~[(c)]~~ **(D)**        (1)        A judgment of restitution does not preclude the property  
26 owner or the victim who suffered personal physical or mental injury, out-of-pocket  
27 loss of earnings, or support from bringing a civil action to recover damages from the  
28 restitution obligor.

29                   (2)        A civil verdict shall be reduced by the amount paid under the  
30 criminal judgment of restitution.

1           **[(d)] (E)**     In making a disposition on a finding that a child at least 13 years  
2 old has committed an act of graffiti under § 6–301(d) of the Criminal Law Article, the  
3 court shall order the child to perform community service or pay restitution or both.

4 11–614.

5           (a)     **[If practicable, the] EACH State’s Attorney [should] SHALL:**

6                   (1)     notify an eligible victim of the victim’s right to request restitution;  
7 **[and]**

8                   (2)     help the victim to prepare the request and advise the victim as to  
9 the steps for collecting restitution that is awarded; **AND**

10                   **(3)     IF THE VICTIM SUFFERED IDENTITY FRAUD, CONSULT WITH**  
11 **THE OFFICE OF THE ATTORNEY GENERAL TO PROVIDE:**

12                           **(I)     ADVICE ABOUT MAKING A RESTITUTION CLAIM;**

13                           **(II)    ASSISTANCE WITH PREPARATION OF THE RESTITUTION**  
14 **CLAIM; AND**

15                           **(III)   ADVICE ABOUT ENFORCING A RESTITUTION CLAIM.**

16           (b)     If a victim cannot be located, all money collected from a judgment of  
17 restitution shall be treated as abandoned property under Title 17 of the Commercial  
18 Law Article.

19 **11–614.1.**

20           **(A)     IN CONJUNCTION WITH THE ADMINISTRATION OF IDENTITY THEFT**  
21 **PASSPORTS AS ESTABLISHED UNDER § 8–305 OF THE CRIMINAL LAW ARTICLE,**  
22 **THE OFFICE OF THE ATTORNEY GENERAL MAY PROVIDE TO VICTIMS OF**  
23 **IDENTITY FRAUD INFORMATION AND ASSISTANCE ON:**

24                           **(1)     RECOVERY FROM FINANCIAL DAMAGE OR LOSS; AND**

25                           **(2)     HOW TO MAKE A VALID CLAIM FOR RESTITUTION.**

26           **(B)     ASSISTANCE PROVIDED UNDER THIS SECTION SHALL INCLUDE**  
27 **ESTABLISHING A MONETARY VALUE OF THE FINANCIAL DAMAGE OR LOSS**  
28 **INCURRED BY A VICTIM OF IDENTITY FRAUD.**

1           **(C) THE OFFICE OF THE ATTORNEY GENERAL SHALL DEVELOP AN**  
2 **IDENTITY FRAUD RESTITUTION AFFIDAVIT FORM FOR VICTIMS OF IDENTITY**  
3 **FRAUD THAT DOCUMENTS HOW THE VICTIM'S REQUESTED AMOUNT FOR**  
4 **RESTITUTION WAS ESTABLISHED.**

5           **(D) THE OFFICE OF THE ATTORNEY GENERAL MAY ADOPT**  
6 **REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SECTION.**

7 11-615.

8           (a) In a restitution hearing held under § 11-603 of this subtitle, **AN**  
9 **IDENTITY FRAUD RESTITUTION AFFIDAVIT OR** a written statement or bill for  
10 medical, dental, hospital, counseling, funeral, or burial expenses is legally sufficient  
11 evidence of the amount, fairness, and reasonableness of the charges and the necessity  
12 of the services or materials provided.

13           (b) A person who challenges the fairness and reasonableness or the necessity  
14 of the amount on the **AFFIDAVIT OR A** statement or bill has the burden of proving  
15 that the amount is not fair and reasonable.

16           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
17 October 1, 2012.